Filed 2/15/19 Lattimore v. Carlson CA6

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

YVONNE LATTIMORE, Plaintiff and Appellant, v. JOHN R. CARLSON, Defendant and Respondent.	H044730 (Monterey County Super. Ct. No. M115880)

Plaintiff Yvonne Lattimore brought a wrongful death action against defendant John R. Carlson, M.D. based on his care and treatment of her father, decedent Albert Lattimore (Lattimore). The trial court granted defendant's motion for summary judgment and entered judgment in favor of defendant. Plaintiff contends: (1) the trial court erred in granting the motion, because there was a triable issue of material fact regarding causation; and (2) the trial court exhibited bias against her. We affirm the judgment.

I. Factual and Procedural Background

A. Second Amended Complaint

Plaintiff's second amended complaint alleged a single cause of action for wrongful death. Plaintiff alleged that defendant and others negligently treated Lattimore and

caused his death.[1] More specifically, plaintiff alleged that "defendants . . . so negligently examined and treated plaintiff's decedent, diagnosed and failed to diagnose his gastrointestinal bleeding, and so negligently cared for him . . . that plaintiff's decedent died on January 24, 2011." Plaintiff also alleged that "at no time prior to the events, conduct . . . , care and treatment herein complained of did the defendants or any of them, obtain knowledgeable, informed consent for said care, treatment or conduct; that prior to the initiation of or performance of said care, treatment, procedure or conduct, no opportunity was afforded plaintiff, or any authorized agent of the plaintiff or decedent to exercise voluntary, knowledgeable and informed consent to said care, treatment, or procedure."

B. Summary Judgment Motion

In his motion for summary judgment, defendant argued that plaintiff could not establish that he caused or contributed to Lattimore's death. Defendant submitted, among other things, Lattimore's medical records and the declaration of Barry Gardiner, M.D., a general surgeon, to support the following facts.

On January 21, 2011, Lattimore, who was 74 years old and had a history of chronic myelomonocytic leukemia, was brought to Salinas Valley Memorial Hospital. He complained of chronic generalized weakness as well as aches and pain. His family stated that he had passed black-colored stools a few days earlier. Dr. Shehzad Aziz, an oncologist, assessed Lattimore with "[p]ancytopenia secondary to underlying chronic myelomonocytic leukemia, . . . [¶] . . . [e]levated serum creatinine . . . , [and] [¶] . . .

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[1] Plaintiff's second amended complaint included several other defendants, but they are not parties to this appeal.

[a]nemia" and admitted him to the hospital.[2] Lattimore also had diabetes and early dementia.

Dr. Aziz requested a consultation with defendant, who is a gastroenterologist. Defendant examined Lattimore later that day to evaluate "GI bleeding." Lattimore's stool was black and "guaiac positive," indicating traces of blood. Defendant was concerned about a bleeding source in the upper gastrointestinal tract. He started Lattimore on Protonix, an acid blocker, and planned on an esophagogastroduodenoscopy (EGD) procedure the following morning unless Lattimore's bleeding became more profuse during the night.

At approximately noon on January 22, 2011, defendant performed the EGD procedure and observed an oozing, cratered ulcer with an adherent clot in the duodenal bulb. Defendant injected this area with epinephrine before coagulating it for hemostasis. The procedure also revealed that Lattimore's esophagus was normal and he had gastritis, which was biopsied. Lattimore "tolerated the procedure well." After the procedure, Lattimore received one unit of red blood cells at 12:25 p.m. and another at 2:40 p.m. Lattimore's hemoglobin level before the transfusions was 7.4 at 6:40 a.m. on January 22, 2011. His hemoglobin level after the transfusions was 8.7 at 7:29 p.m. on the same day.

In Dr. Gardiner's opinion, defendant reasonably and appropriately recommended and performed the EGD procedure on January 22, 2011, to evaluate the source of bleeding. When defendant observed the duodenal ulcer with an oozing clot, defendant also appropriately treated the site with BiCAP cautery and injection therapy to reduce or stop the bleeding, because this was the standard and accepted treatment for patients with gastrointestinal bleeding. The rise in Lattimore's hemoglobin level after the EGD

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[2] Approximately three weeks before this hospital admission, Dr. Peyman Haghighat, Lattimore's outpatient oncologist, stated that Lattimore's life expectancy was less than six months.

indicated that defendant "successfully temporarily stop[ped] the bleeding process or partially did so . . . ."

On January 23, 2011, Lattimore began experiencing increasing abdominal pain. Dr. Aziz ordered a CT scan of his abdomen and pelvis, which revealed a "[l]arge retroperitoneal hematoma in and around the duodenum." The radiologist's report stated that the "case was discussed with Dr. Ray Carrillo and [that] further discussions will be made with family and consultants in [sic] this patient who evidently has poor prognosis from other underlying conditions, including leukemia."

According to Dr. Gardiner, Lattimore's development of further gastrointestinal bleeding was "consistent with an ongoing ulcer becoming worse as acid from the gastrointestinal tract continued to bathe the ulcer, causing it to expand. This results in erosion not only of the wall of the duodenum but the neighboring gastroduodenal artery which runs just under duodenum. This progressive worsening of the ulcer and bleeding related to the natural history of ulcer disease" and it was not caused or contributed to by defendant's care and treatment of Lattimore.

Dr. Gardiner stated that Lattimore's myelomonocytic leukemia contributed to the bleeding process. This illness reduced Lattimore's platelet count to 50,000, which was below the normal range of 250,000 to 500,000. Even after blood transfusions, Lattimore's platelet count never rose above 79,000. He explained that "[t]he ability of the body to naturally clot in order to control bleeding, such as from this ulcer, starts with the platelets. The coagulation mechanism begins with accumulation of platelets in the area of the bleeding source. The platelets then release factors that initiate a coagulation cascade. This patient had a severely impaired coagulation mechanism due to his underlying leukemia condition."

On January 23, 2011, Dr. James Dickey, a surgeon, evaluated Lattimore. Due to the critical nature of Lattimore's condition, he felt that Lattimore was at high risk for surgery and considered embolization. Dr. Dickey elected not to perform surgery. A

second CT scan later that day revealed the large hemorrhagic clot as well as free fluid in the abdomen and pelvis that likely reflected hemorrhage.

On January 24, 2011, defendant performed a second EGD procedure. Red blood was found in the esophagus and stomach. The oozing ulcer with adherent clot was found in the duodenal bulb. Defendant did not disrupt the clot or treat the ulcer with injection or cautery for fear of inducing uncontrollable bleeding. Defendant recommended further consideration of coil embolization versus exploratory laparotomy versus comfort care.

Dr. Gardiner concluded that the second EGD procedure had no impact on Lattimore's bleeding or death. Given Lattimore's chronic myelomonocytic leukemia with profoundly low platelets, defendant appropriately refrained from manipulating the clot. In Dr. Gardiner's view, defendant's recommendation of coil embolization versus exploratory laparotomy versus comfort care after the EGD procedure was also appropriate. Dr. Gardiner pointed out that coil embolization is within the expertise of an interventional radiologist and exploratory laparotomy is within the expertise of a surgeon. Defendant "as a gastroenterologist would not be the one to determine whether to perform or to actually perform either coil embolization or exploratory laparotomy."

Dr. Dickey evaluated Lattimore again and determined that surgical repair would not be done due to the critical nature of Lattimore's coexisting medical problems. Instead, nonsurgical measures, including RBC transfusions, would be administered.

That evening, Lattimore suffered a cardiac arrest. He was resuscitated, but he had to be intubated and placed on a ventilator. He coded an hour later in the intensive care unit. He was successfully resuscitated, but he suffered another cardiac arrest later that night and no resuscitative measures were taken. Lattimore passed away at 9:45 p.m.

In Dr. Gardiner's opinion, defendant's "diagnoses, recommendations, treatment and interventions were reasonable and appropriately performed to address the patient's gastrointestinal symptoms. Moreover, to a reasonable degree of medical probability, no

act or omission by [defendant] was the cause of or a substantial factor in causing Mr. Lattimore's death."

C. Summary Judgment Opposition

Plaintiff filed opposition to the motion for summary judgment. She argued that defendant's acts or omissions were substantial factors in causing Lattimore's injuries and death. Plaintiff submitted, among other things, a declaration by Warren Duke Turner, M.D. Plaintiff asserted the following facts. Dr. Turner was Lattimore's primary care physician until his death. Lattimore "did not have a long medical history of being diagnosed with Chronic Monocytic Leukemia" and "has never had terminal Chronic Monocytic Leukemia." Lattimore was "never diagnosed with less than 6 months to live by [Dr. Turner] or any other physician to [Dr. Turner's] knowledge. [¶] . . . Dr. Peyman Haghighat never informed [Dr. Turner] that . . . Lattimore had less than 6 months to live."

According to Dr. Turner, defendant noted in his medical report at 8:00 a.m. on January 23, 2011, that Lattimore had a bowel perforation after defendant performed the EGD procedure on him and a perforated bowel "cause[s] a life-threatening infection and the patient becomes septic and dies." Dr. Turner opined that defendant was negligent because he failed to give Lattimore immediate medical attention as soon as he became aware of this injury. Dr. Turner also noted that Dr. Dickey's report stated: "The CT scan image shows what appears to be a retroperitoneal hematoma adjacent to the duodenum the hypothesis is that bleeding from an endoscopy procedure with injection of a bleeding ulcer might have led to retroperitoneal bleeding." Dr. Turner further opined that defendant's "negligence and wrongful acts of treatment and interventions were unreasonable and inappropriately performed" during Lattimore's EGD procedure and thus defendant "was the cause and substantial factor in causing . . . Lattimore's death."

Dr. Turner stated that defendant also performed different procedures, that is, a stomach biopsy, gastritis biopsy, and injections into the intestine, without obtaining an "Intervention Informed Consent" form from plaintiff.[3] Dr. Turner opined that defendant acted wrongfully, because all physicians are required to obtain this authorization in order to treat any medical condition discovered during a procedure that is outside the scope of the "Informed Consent to Surgery or Special Procedure" form.

D. Defendant's Reply

Defendant filed a reply to plaintiff's opposition and argued that plaintiff had failed to present any admissible evidence that his negligence was a legal cause of, or a substantial factor in, causing Lattimore's death. Defendant also submitted objections to Dr. Turner's declaration.

E. Trial Court's Ruling

The trial court sustained several of defendant's objections to evidence offered by plaintiff. The trial court ruled that Dr. Turner's statement that Lattimore had a perforated bowel and upper GI bleeding after the EGD procedure mischaracterized the record. The trial court also ruled that Dr. Turner's opinion that defendant's negligence and wrongful acts were the cause of Lattimore's death was a legal conclusion without evidentiary support. The trial court further sustained objections to Dr. Turner's statements regarding Lattimore's life expectancy and his diagnoses on the ground that they were irrelevant.

The trial court found that no act or omission by defendant was the cause of, or a substantial factor in causing, Lattimore's death. The trial court reasoned that "[t]he entire premise of Dr. Turner's declaration is that a perforated bowel existed, which would lead

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[3] On January 22, 2011, plaintiff, who held a durable power of attorney for Lattimore's health care, signed the Informed Consent to Surgery or Special Procedure form.

to sepsis and death. [¶] There's no evidence of a perforated bowel, let alone sepsis. As I mentioned before, the only reference to perforated bowel is the January 23, 2011, handwritten note of Dr. Carlson questioning whether there might be one. But there is no diagnosis anywhere of the same, nor any evidence that it actually was there, let alone sepsis." Thus, the trial court granted the motion for summary judgment and entered judgment in favor of defendant. Plaintiff filed a timely notice of appeal.

II. Discussion

A. Motion for Summary Judgment

1. Standard of Review

"'"Appellate review of a ruling on a summary judgment . . . is de novo."'" (*Food Pro Internat., Inc. v. Farmers Ins. Exchange* (2008) 169 Cal.App.4th 976, 993.) "In performing our independent review of a defendant's summary judgment motion 'we identify the issues framed by the pleadings since it is these allegations to which the motion must respond . . . .'" (*Jones v. Wachovia Bank* (2014) 230 Cal.App.4th 935, 945 (*Jones*).) "[T]he party moving for summary judgment bears the burden of persuasion that there are no triable issues of material fact and that [the moving party] is entitled to judgment as a matter of law." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) The moving party "bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact." (*Ibid.*) "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Ibid.*) A triable issue of fact can only be created by conflicting evidence, not speculation or conjecture. (*Horn v. Cushman & Wakefield Western* (1999) 72 Cal.App.4th 798, 807.)

2. Wrongful Death

"'"The elements of the cause of action for wrongful death are the tort (negligence or other wrongful act), the resulting death, and the damages, consisting of the pecuniary loss suffered by the heirs."' [Citation.]" (*Lattimore v. Dickey* (2015) 239 Cal.App.4th 959, 968, italics omitted (*Lattimore*).) Here, plaintiff alleged that the underlying torts which resulted in Lattimore's wrongful death were defendant's medical malpractice and professional negligence for failure to obtain the patient's informed consent.[4]

"The elements of a cause of action for medical malpractice are: (1) a duty to use such skill, prudence, and diligence as other members of the profession commonly possess and exercise; (2) a breach of the duty; (3) a proximate causal connection between the negligent conduct and the injury; and (4) resulting loss or damage." (*Johnson v. Superior Court* (2006) 143 Cal.App.4th 297, 305.) "'[I]n a personal injury action causation must be proven within a reasonable medical probability based upon competent expert testimony.'" (*Lattimore*, *supra*, 239 Cal.App.4th at p. 970.) "If a plaintiff cannot present evidence the defendant's conduct more likely than not was a substantial factor (a cause in fact) of the plaintiff's alleged injury, then the issue of causation should not go to the jury and the defendant is entitled to judgment." (*Uriell v. Regents of University of California* (2015) 234 Cal.App.4th 735, 746.)

The elements of a cause of action for professional negligence for failure to obtain the patient's informed consent are set forth in Judicial Council of California Civil Jury Instruction (2014) CACI No. 533. To establish this claim, a plaintiff must prove: (1) the defendant performed a medical procedure on the plaintiff; (2) the defendant did not disclose to the plaintiff the important potential results and risks of the medical procedure;

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[4] Plaintiff refers repeatedly to the tort of battery in her opening brief. However, the second amended complaint did not allege a cause of action for battery. Accordingly, these arguments are not relevant to this appeal. (*Jones*, *supra*, 230 Cal.App.4th at p. 945.)

(3) a reasonable person in the plaintiff's position would not have agreed to the medical procedure if he or she had been adequately informed; and (4) the plaintiff was harmed by a result or risk that the defendant should have explained. (CACI No. 533.) "[A]n action for failure to obtain informed consent lies where 'an *undisclosed* inherent complication . . . occurs' [citation]." (*Warren v. Schecter* (1997) 57 Cal.App.4th 1189, 1202.) Thus, there is no cause of action for failure to obtain the patient's informed consent, if the complication was not proximately caused by the medical procedure.

3. Analysis

At issue in this case is whether defendant demonstrated that there were no triable issues of material fact on the element of causation and he was entitled to judgment as a matter of law.

Here, according to Dr. Gardiner, Lattimore's symptoms indicated that he was suffering from gastrointestinal bleeding when he arrived at the hospital. In Dr. Gardiner's view, defendant reasonably and appropriately recommended and performed an EGD procedure to evaluate the source of bleeding. Defendant also appropriately treated Lattimore's duodenal ulcer with BiCAP cautery and injection therapy to reduce or stop the bleeding. The rise in Lattimore's hemoglobin level after this procedure indicated that defendant had either temporarily stopped Lattimore's bleeding or partially did so.

In Dr. Gardiner's opinion, Lattimore's abdominal pain the following day indicated that he had developed further gastrointestinal bleeding. He opined that "[t]his progressive worsening of the ulcer and bleeding related to the natural history of ulcer disease" and it was not caused or contributed to by defendant's care and treatment. Dr. Gardiner also explained how Lattimore's myelomonocytic leukemia contributed to the bleeding process.

Dr. Gardiner opined that the second EGD procedure had no impact on Lattimore's bleeding or death. He explained that defendant appropriately refrained from

manipulating the clot due to concern of inducing uncontrollable bleeding since Lattimore had chronic myelomonocytic leukemia with profoundly low platelets. In Dr. Gardiner's view, defendant's recommendation of coil embolization versus exploratory laparotomy versus comfort care after the EGD procedure was also appropriate.

Thus, defendant made a prima facie showing that there were no triable issues as to whether a negligent act or omission by defendant was the cause of, or a substantial factor in, causing Lattimore's death. This same evidence also demonstrated that Lattimore's death was not caused by a risk of the EGD procedures defendant performed that should have been, but were not, disclosed to plaintiff before the procedures were performed.

Turning to the evidence submitted by plaintiff in opposition to the summary judgment motion, we first consider plaintiff's contention that the trial court erred in sustaining defendant's objections to Dr. Turner's declaration.

When a party asserts a point on appeal, but fails to support it with reasoned argument and citations to relevant authority, this court may treat the point as waived. (*People v. Stanley* (1995) 10 Cal.4th 764, 793.) Here, plaintiff has failed to support her contention with argument or legal authority. Accordingly, this contention has been waived.

Even if we were to consider plaintiff's contention, it has no merit. As our California Supreme Court has explained: "[U]nder Evidence Code section 801, subdivision (b) and 802, the trial court acts as a gatekeeper to exclude expert opinion testimony that is (1) based on matter of a type on which an expert may not reasonably rely, (2) based on reasons unsupported by the material on which the expert relies, or (3) speculative." (*Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 771-772.) "[E]xpert opinion may not be based on assumptions of fact that are without evidentiary support or based on factors that are speculative or conjectural, for then the opinion has no evidentiary value and does not assist the trier of fact. [Citation.] Moreover, an expert's opinion rendered without a reasoned explanation of why the

underlying facts lead to the ultimate conclusion has no evidentiary value because an expert opinion is worth no more than the reasons and facts on which it is based. [Citations.]" (*Bushling v. Fremont Medical Center* (2004) 117 Cal.App.4th 493, 510 (*Bushling*).) "If the court excludes expert testimony on the ground that there is no reasonable basis for the opinion, we review the exclusion of evidence under the abuse of discretion standard. [Citations.]" (*Lockheed Litigation Cases* (2004) 115 Cal.App.4th 558, 564.)

Here, the trial court did not abuse its discretion. Dr. Turner's opinions regarding causation were based on his conclusion that Lattimore had a bowel perforation. He stated that defendant "noted on his 1/23/2011, handwritten medical report at 8 a.m. that decedent Albert Lattimore had a bowel perforation . . . ." He then opined that defendant "was negligent because he failed to give decedent Albert Lattimore immediate medical attention to his perforated bowel injury . . . ." But Dr. Turner's conclusory statement mischaracterized the record. On January 23, 2011, defendant noted: "Perf?" This notation indicated that the diagnosis was considered, but it did not establish that this diagnosis was ever made. Later that day, Dr. Carrillo noted that "the flat plate and upright abdomen do not show obvious perforation . . . ." Dr. Dickey also hypothesized that the EGD procedure might have led to retroperitoneal bleeding. Thus, there was no evidence that defendant or any other physician ever diagnosed Lattimore with a bowel perforation. Since Dr. Turner's opinions were based on an assumption that had no evidentiary support, the trial court did not abuse its discretion in excluding them. (*Bushling, supra*, 117 Cal.App.4th at p. 510.)

Dr. Turner stated: "In my professional opinion Dr. Carlson's negligence also caused personal harm, injury and death to Albert Lattimore due to the fact, Dr. Carlson failed to give medical attention and treatment to decedent's life-threatening [g]astrointestinal perforation which was a medical emergency . . . ." He also stated: "[I]t is my professional opinion that Dr. John Carlson's negligence and wrongful acts of

treatment and interventions were unreasonable and inappropriately performed during decedent Albert Lattimore's Endoscopy (EGD) procedure; therefore, Dr. John Carlson was the cause and substantial factor in causing decedent Albert Lattimore's death on 1/24/2011." However, these opinions were "rendered without a reasoned explanation of why the underlying facts lead to the ultimate conclusion" and thus they had "no evidentiary value because an expert opinion is worth no more than the reasons and facts on which it is based. [Citations.]" (*Bushling, supra,* 117 Cal.App.4th at p. 510.) There was no abuse of discretion by the trial court in sustaining defendant's objections to these opinions in Dr. Turner's declaration.

Dr. Turner also stated: "Based upon Dr. Carlson's Response to Plaintiff's Admissions that he is not a licensed surgeon in the state of California in that defendant had no hospital privileges to perform surgery and was not trained or qualified to perform surgery; that he cannot perform surgery on patients, in that he had no hospital privileges to perform surgery and was not trained or qualified to perform surgery then in my professional opinion regarding defendant's above admissions, it is a substantial factor that Dr. John Carlson was negligent for performing decedent's [e]ndoscopy (EGD) procedure; therefore, clearly causing decedent Albert Lattimore's death by way of murder." Here, it was undisputed that defendant was a gastroenterologist, not a surgeon. Dr. Turner failed to explain the factual basis for his opinion that defendant was "negligent for performing" the EGD procedure on Lattimore and caused his death, because defendant was not a surgeon. Since there was no evidentiary support for this opinion, the trial court properly excluded it. (*Bushling, supra,* 117 Cal.App.4th at p. 510.)

The remaining portions of Dr. Turner's declaration did not create a triable issue of fact as to causation.[5] Dr. Turner stated: "On 1/23/2011, decedent Albert Lattimore,

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[5] Plaintiff argues that the trial court erred when it determined the Dr. Turner was not qualified to render an expert opinion as to causation. Dr. Turner's declaration stated:

developed severe and exquisite abdominal pain, fluid in the abdominal cavity, an infection, acute kidney failure that required urgent dialysis, hypotension, severe abdominal tenderness in all quadrants, a large collection of blood in the upper abdominal cavity, retroperitoneal bleeding (hematoma) adjacent to the duodenum that followed the gastroenteroscopy for an identified duodenal ulcer performed on 1/22/2011, by Dr. Carlson upon decedent Albert Lattimore." However, Dr. Turner's statement did not explain any causal relationship between defendant's acts or omissions and Lattimore's medical condition or death. (*Bushling*, *supra*, 117 Cal.App.4th at p. 510.)

As for plaintiff's informed consent claim, plaintiff failed to make a prima facie showing of a disputed issue of fact as to causation. Dr. Turner opined that defendant acted wrongfully when defendant performed certain procedures during the EGD without obtaining an Intervention Informed Consent form from plaintiff. He stated that all physicians are required to obtain this type of authorization in order to treat any medical condition discovered during a procedure that is outside the scope of the Informed Consent to Surgery or Special Procedure authorization form. But as previously discussed, Dr. Turner's declaration failed to show that Lattimore's death was caused by any procedures performed by defendant. Thus, the declaration failed to show that Lattimore's death was caused by a risk of any procedures that defendant failed to disclose.

In sum, plaintiff failed in her burden of showing the existence of a triable issue of fact as to causation. Accordingly, the trial court properly granted defendant's motion for summary judgment.

"Due to my training and experience in Emergency Medicine and also as a Surgeon, I am very familiar with the rol[e] of upper Endoscopy-Esphagogastroduodenoscopy ('EGD') Procedures." However, neither his declaration nor his CV include any evidence that he has any education, training, or experience to support this statement. For purposes of this appeal, however, we will assume that he was qualified to render an expert opinion.

B. Judicial Bias

Plaintiff also contends that Judge Thomas Wills, who heard and granted defendant's summary judgment motion, was biased and prejudiced against her. On February 10, 2017, plaintiff filed a peremptory challenge of Judge Wills pursuant to Code of Civil Procedure section 170.6. The challenge was denied as untimely on the ground that the case had been assigned to Judge Wills on March 1, 2016.

The denial of a motion to disqualify a judge is not an appealable order. (Code Civ. Proc. § 170.3, subd. (d).)[6] The exclusive means of obtaining appellate review of such an order is by filing a petition for writ of mandate within 10 days after notice of the order. (*Ibid.*) Thus, plaintiff is precluding from challenging the order on statutory grounds in this appeal.

In any event, plaintiff's argument has no merit. The judgment of a lower court is presumed to be correct on appeal. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) An appellant must affirmatively show error to overcome this presumption. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) It is the appellant's burden to "present[] legal authority on each point made and factual analysis, supported by appropriate citations to the material facts in the record; otherwise, the argument may be deemed forfeited. [Citations.]" (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655-656.)

Here, without any citation to the record before us, plaintiff summarizes the facts underlying her petition for restraining orders in 2011 and her unlawful detainer action in 2013 and asserts that the trial court exhibited bias towards her in both cases. Since

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[6] Code of Civil Procedure section 170.3 subdivision (d) provides in part: "The determination of the question of the disqualification of a judge is not an appealable order and may be reviewed only by a writ of mandate from the appropriate court of appeal sought only by the parties to the proceeding. The petition for the writ shall be filed and served within 10 days after service of written notice of entry of the court's order determining the question of disqualification."

plaintiff's arguments concerning the trial court's bias are based on matters outside the record before us, they are deemed forfeited.

In her reply brief, plaintiff contends that the trial court exhibited bias and prejudice against her during the hearing on the summary judgment motion. She claims that she was "fined and sanctioned . . . for arguing [her] case . . . ." The record does not support her claim. After interrupting the trial court twice, plaintiff was warned that her right to argue at the hearing would be terminated if she continued to interrupt. After plaintiff began reading Dr. Turner's declaration during the hearing, the trial court explained that it had read the declaration, the declaration was already part of the record, and the declaration had been reviewed and considered. The trial court asked her to present her argument as to causation. While the trial court was speaking, plaintiff interrupted him. The trial court told her that she would be sanctioned each time she interrupted. Plaintiff then read several pages of Dr. Turner's declaration. When the trial court attempted to explain that what she was about to read had nothing to do with the issue of causation, plaintiff again interrupted the trial court. The trial court then sanctioned her $25. After careful review of the reporter's transcript, we conclude that the trial court did not exhibit bias or prejudice against plaintiff.

III. Disposition

The judgment is affirmed.

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Mihara, J.

WE CONCUR:

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Elia, Acting P. J.

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Bamattre-Manoukian, J.

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